IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/08/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 12380 of 1995
and
W.M.P. No. 19767 of 1995

K. Sekhar ... Petitioner

-Vs-

1. State of Tamil Nadu
rep. by the Commissioner and
Secretary
Prohibition & Excise Department
Fort St. George
Madras 600 009

2. The Superintendent of Police
O/of the Superintendent of Police
Prohibition Enforcement Wing
Chengalpet M.G.R. Zone
Sabari Nagar, Porur
Madras 600 116 ... Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Declaration as stated therein.

For Petitioner : Mr. S. Kadarkarai

For Respondents : Mr. K. Mahendran, Special Govt. Pleader (Prohibition)

:ORDER

The petitioner has filed the above writ petition seeking for a writ of Declaration to declare Section 14 (4) of the Tamil Nadu Prohibition Act 1937 as unconstitutional, null and void and unenforceable.

2. Heard both sides. The petitioner is the owner of the vehicle bearing Registration No. AP-9U-4788. The petitioner's vehicle was hired by M/s. Quality Wines, Mahe to transport IMFL goods from Pondicherry to Mahe and

the goods were covered by valid permit issued by the Pondicherry, Tamil Nadu and Karnataka authorities. Due to some delay in transit, the petitioner's permit issued by the Tamil Nadu authorities had expired while on transit. On 04-06-1995, the lorry and the goods were seized on the alleged ground that the goods were transported without any valid permit and a case was registered in crime No. 285 of 1995 by the Kiliyanur Police Station, Tindivanam Taluk. The vehicle was later released on 19-06-1995 by an order passed by the Judicial Magistrate, Vanur. The 2nd respondent has issued a show cause notice dated 28-06-1995 under Section 14 (4) of the Tamil Nadu Prohibition Act, 1937 and called for an explanation as to why the vehicle should not be confiscated. As against the said show cause notice, the present writ petition has been filed.

3. Mr. Kadarkarai, learned counsel appearing for the petitioner submitted that Section 14 (4) of the Act is unconstitutional as the authorities referred to in the section has been conferred with the power to confiscate the vehicle over riding the powers given to the Court; that Section 14 (4) of the Act is unreasonable and imposed a restriction on the court from exercising its power under Section 14 (2) of the Act and such restriction on the court is against law. It is also argued by the learned counsel that the provisions of Section 14 (4) is no nexus to the object sought to be achieved; that if a person is able to prove to the satisfaction of the Court that he has exercised due care in preventing the commission of such offence, his vehicle should not be confiscated but the power under Section 14 (4) stand in the way; that the powers vested with the authority for confiscating a vehicle is unreasonable and arbitrary as such the same is liable to be strucked down; that the impugned provision does not satisfy the test of reasonableness; that the authority is invested with the power to confiscate the vehicle whether or not prosecution is instituted. While so, there is every likelihood of exercising their power arbitrarily without even pursuing the matter through criminal court. The learned counsel also submitted that the petitioner has no knowledge about the alleged offence that the vehicle had transported goods without valid permit; that the alleged offence is beyond the control of the petitioner.

4. Mr. Mahendran, learned Special Government Pleader appearing for the respondents argued, relying on the counter filed by the respondents that on 04-06-1995, the Inspector of Police, Kilianur conducted vehicle check in Pondy-Tindivanam Road and at about 06.30 hours the lorry bearing No. AP 9U 4788 was intercepted and seized for transporting 12000 beer bottles without valid permit. On enquiry, it was revealed that the lorry belonged to the petitioner herein. Thereafter, the seized properties were sent for chemical analysis, the driver and cleaner were brought to Kilianur Police Station and a case in Crime No. 2 85 of 1995 was registered against them under Sec. 7 (1) 24 read with 2 (20), 4 (1) 9(a), 11 and 12 of Tamil Nadu Prohibition Act. Later, they were produced before court and the Judicial Magistrate, Vanur remanded them for the offences stated above. The respondents deny that the vehicle was hired by the petitioner because the petitioner himself is the owner of the said lorry as such the question of hiring the lorry does not arise. It is also further canvassed that the averment that the provisions of Prohibition Act places restriction on the court to exercise the powers provided under Section 14 (2) is not correct that the powers provided under

Sub-section (4) of Section 4 does not control the powers of the Court under Section 14 (2) of the Act; that the petitioner was denied opportunity before confiscation of the goods in violation of principles of natural justice was denied by the 2nd respondent. In support of his contention, the learned Special Government Pleader relied on a judgment reported in 1997 1 Law Weekly (Criminal) Page 93 (The Commissioner of Police, Egmore, Madras -8 and another Vs. R. Kothandapani) to say that Section 14 (4) is intravires; that Section 14 (5) of the Act gives a right of appeal to a person to file an appeal against the order of confiscation passed under Section 14 (A) of the Act before the Court of Sessions having jurisdiction and prayed for dismissal of the writ petition.

5. Now, we look into the relevant provisions of Section 14 of the Tamil Nadu Prohibition] Act:-

14. Confiscation how ordered:- (1) When the offender is convicted or when the person charged with an offence against this Act is acquitted but the court decides that anything is liable to confiscation, such confiscation shall be ordered by the Court.

(2) Where, during the trial of a case for an offence against this Act, the court decides that anything is liable to confiscation the Court shall ordered the confiscation:

Provided that no animal, vessel, cart or other vehicle shall be confiscated under sub-section (1), or sub-section (2) if the court after hearing the owner of such animal, vessel, cart or other vehicle and any person claiming any right thereto, is satisfied that the owner and such person had exercised due care in the prevention of the commission of such an offence.

(3) When an offence against this Act has been committed but the offender is not known, or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector or other Prohibition Officer-in-charge of the District or by any other officer authorised by the State Government in that behalf who shall order such confiscation:

Provided that no such order shall be made until the expiration of fifteen days from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any which they produce in support of their claims.

(4) Notwithstanding anything contained in sub-sections (1) to (3), if the Collector or other Prohibition Officer-in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such

offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given-

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle:

(ii) an opportunity at making a representation in writing within a reasonable time, not exceeding fourteen days as may be specified in the notice against the grounds of confiscation: and

(iii) a reasonable opportunity of being heard in the matter

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

(5) Any person aggrieved by an order of confiscation under subsection (4) may, within one month from the date of the receipt of such order, appeal to the court of sessions having jurisdiction.

6. Section 14 (4) contemplates that Notwithstanding anything contained in sub-sections (1) to (3), if the Collector or other Prohibition Officer-in-charge of the district or any other officer authorised by the State Government is satisfied that an offence has been committed under the Prohibition Act whether or not a prosecution is instituted for such offence, he may without prejudice to any other punishment to which the offender is liable under this Act shall order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence. The proviso attached to Section 14 (4) directed the authorities before passing an order of confiscation to comply with the mandatory requirements namely (i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle (ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days as may be specified in the notice and (iii) a reasonable opportunity of being heard in the matter. The proviso attached with contemplates that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle. Before exercising the powers under Section 14 (4) of the Act the authorities should comply with the said mandates.

7. The learned Counsel appearing for the petitioner relied on a decision reported in AIR 1983 Madras 232 (D. Shanthalakshmi and others Vs. State of Tamil Nadu and others) in support of his contention. In the said judgment, the old provisions of Section 14 (4) i.e., prior to substitutions were strucked down as it offends Article 19 (1) (g) and 300 (A) of

Constitution of India and is ultra vires, however upheld Section 14 (A) intravires the constitution. In the said Judgment, a Division Bench of this Court also held that notwithstanding anything contained in sub-sections (1) to (3), if the Collector or other Prohibition Officer-in-charge of the district or any other officer authorised by the State Government in that behalf shall detain any animal, vessel, cart or other vehicle used in the commission of such offence against this Act till the case is disposed of by the Court and notwithstanding anything in the Criminal Procedure Code, no interim order regarding the disposal of such property shall be passed by the court till the case is disposed of.

8. It is also argued by the learned counsel for the petitioner that the powers invested under the present Act with the authorities was lesser than prior to substitution. The said provisions were strucked down by the Division of this Court, while so, the present provisions of section 14 (4) of the Act is liable to be strucked down as it has invested unfettered powers with the authorities which could be possibly exercised by them even before an aggrieved person seek his remedy through court of law. The said argument is untenable because prior to substitution under Section 14 (4) an executive authority has been empowered to detain the vehicle used in the commission of a prohibition offence till the case is disposed of by the court, besides that, it prevented the court from passing interim order regarding disposal of the property till the disposal of the case. On consideration of the principles of test of reasonableness, the Division Bench of this Court found that such a power given in the hands of the authorities would lead to unintended consequences and would definitely affect the economy and interest of the public. The Division Bench also held that there was absolutely nothing in the Act to validate the transport of small quantity of liquor even by a bonafide consumer holding a permit and in the light of relaxation of the prohibition policy, the stringent provisions contained in Section 14 (4) is paradoxical. It was further held by the division bench that the vehicle, whether it be a lorry or car worth several thousands of rupees was liable for detention even for carrying liquor worth about few rupees. The said provision contemplates that a vehicle seized for the first time has to face a penal consequences under Section 14 (4) and it is to be detained, if not for several years atleast for several months. After taking judicial notice, the division Bench found that the normal time for filing charge sheet in the said case and concluded that it may result in enormous loss to the nation by such detention.

9. After substitution, the Sub-section (1) of Section 14 provides as to how confiscation could be ordered by the court of law. Under Section 14 (2), the Court is vested with the powers for confiscation during trial of a case for an offence under this Act, provided after hearing the owner of the vehicle. However, no such confiscation could be ordered if the owner of such vehicle or cart satisfy the court that he had exercised due care in the prevention of commission of such an offence. Sub-section (3) of Section 14 relates to a case that when an offence against this Act has been committed by the offender and if he is not known, or cannot be found, or the person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector or other Prohibition Officer-in-charge of the District or by any other officer authorised by the State Government in that

behalf who shall order such confiscation. Even such confiscation cannot be made until the expiration of 15 days from the date of seizure of the vehicle or cart without hearing the person.

10. Under Section 14 (4) of the Act, though the prosecution of an offender before the court for the offence committed under the Act is not necessary, the proviso to sub-section 4 of Section 14 makes it incumbent upon the authorities incharge to issue notice in writing to the owner or the person from whom the vehicle or cart was seized stating the grounds on which it is proposed to be confiscated. The proviso further makes it incumbent upon the said authority to afford an opportunity to the owner or other person within a reasonable time not exceeding 15 days as may be specified in the notice. In addition to that, after affording reasonable opportunity of being heard, if the authority still comes to a conclusion that the animal or vessel or cart seized should be confiscated, the owner or the person shall be given an option to pay in lieu of confiscation amount not exceeding the market value of the vehicle or cart, as the case may be.

11. Sub-section 5 of Section 14 of the Act contemplates that any person aggrieved by the order of confiscation made under Sub-section 4 of Section 14 may, within one month from the date of receipt of such an order prefer an appeal before the court of sessions having jurisdiction. Section 14 (A) stipulates that where an animal or vessel or cart is used in the commission of an offence is liable to confiscation. Thereafter, the owner shall be deemed to be guilty of such an offence and such owner shall be liable to be proceeded against and punished accordingly unless he satisfies the court that he had exercised due care in the prevention of commission of such an offence. It is clear that Section 14 (A) shifts the burden on the owner of the vehicle to prove that he had exercised due care in the prevention of commission of such an offence. In case, if he satisfies the court, he shall not be proceeded and punished under the Act.

12. Under Section 14 (4) the authorities are invested with powers subject to judicial review. It is incumbent on the authorities before exercising their power of confiscation to afford an opportunity to the offender. There is a vast difference between the provisions prior to substitution and after substitution. Since the remedy of appeal is provided under the Act, that too before court of law, the authorities vested with the powers are controlled from exercising their power arbitrarily. Hence, I have no hesitation to hold that provisions of Section 14 (4) are not transgressed into the powers of the Court nor unreasonable, on the contrary, nexus t o the object achieved. Hence, it is absolutely necessary to scrutinise whether the petitioner herein has satisfactorily accounted for the possession of the goods or not as the counsel for the petitioner argued that the petitioner has taken all care to prevent commission of such offence.

13. Admittedly, the goods are covered by valid permits issued by the Pondicherry, Tamil Nadu and Karnataka Governments. Due to some delay in transit, the permit issued by the authorities of Tamil Nadu has expired while in transit. The counter filed by the respondents also did not disclose that the petitioner has not exercised due care in the prevention of commission of

such an offence. Though show cause notice was issued calling upon the petitioner to explain why his vehicle should not be confiscated, the reasons ex-facie made it clear that he has exercised due care in the prevention of commission of such an alleged offence mentioned in the said notice. In other words, the goods are covered by valid permit issued by the three Governments, however, the permit issued by the Tamil Nadu Government expired while in transit. Therefore, at this length of time, I feel it is just and necessary that instead of directing the petitioner to submit his explanation to the show cause notice, I quash the impugned notice dated 28 -06-1995 and I uphold the provisions of Section 14 (4) as valid.

The writ petition is disposed of on the above terms. No costs.
Connected WMP is closed.

20-08-2002
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Index : Yes
Internet : Yes
To
1. The Commissioner and Secretary
Prohibition & Excise Department

Government of Tamil Nadu
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Madras - 600 009

2. The Superintendent of Police
O/of the Superintendent of Police
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